IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9084 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SN BAROT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9084 of 1999

MR JF SHAH for Petitioner No. 1

Mr. MR Mengde, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 10/12/2003

ORAL JUDGEMENT

Heard learned advocate Mr. Shah for the petitioner and Mr. Mengde, the learned AGP for the

respondent authorities. As per the facts of the present petition, the petitioner herein is, presently, working as a District Health Officer Class I with the District Panchayat, Bhavnagar by order dated 27th September, 2000 and today also, he is working. While working as Medical Officer Class II at the Primary Health Centre Bordi Khurd, Taluka Dahod, an order of suspension has been passed by the State of Gujarat on 8th September, 1982 against the petitioner which was challenged by the petitioner before this court by filing special civil application no. 5229 of 1985 and this court set aside the order of suspension passed against the petitioner. Thereafter, the petitioner was reinstated in service and his total period of suspension has been treated as a period spent on duty by order dated 22nd April, 1991. Total period of suspension from 23rd Sept. 1982 to 27th February, 1986 has been regularized and the same has been treated to have been spent on duty under BCSRs 152 and thereafter, the petitioner was permitted to cross the efficiency bar by the State of Gujarat by order passed in the month of March, 1993. The petitioner was reinstated by order dated 30.9.1991. One criminal case being special case no.1 of 1988 was lodged against the petitioner wherein the petitioner was acquitted by order dated 8th January, 1990 by the competent criminal court. During the course of hearing, it was submitted by the learned advocate Mr. Shah on behalf of the petitioner that the order of acquittal passed by the criminal court in favour of the petitioner has not been challenged by the State Government before the higher forum. Period of suspension has been regularized on the basis of the directions issued by this court in special civil application no. 9008 of 1992. Ultimately, the petitioner was promoted on the post of District Health Officer Class I by order dated 27.9.2000.

During the course of hearing, it was submitted by the learned advocate Mr. Shah that the recommendations made by the TIKU Commission were implemented by the State Government by order dated 17.10.1994. Accordingly, scales for Class II and Class I were revised and provisions for grant of selection grade as well as promotion after completion of seven years of service are made. He also submitted that in view of the resolution dated 17.10.1994 passed by the State Government for accepting the recommendations made by the Tikoo Commission, on completion of six years of service, a Class II Medical Officer is to be promoted as Senior Medical Officer in the pay scale of Rs.3000-4500 and on completion of further seven years, he is to be promoted as a Chief Medical Officer in the pay scale of Rs.

3700-5500. Similarly after completion of six years from the scale of Rs.3700-5500, an officer is entitled for the scale of Rs.4500-5700. According to Mr. Shah, while granting such benefit, there is no need of any post of senior medical officer or the chief medical officer. He submitted that it is the grievance of the petitioner that though the recommendations made by the Tikoo Commission were accepted by the State Government, benefits thereof have not been given to the petitioner in Class II and Class I with effect from 17.10.1994.

The respondents have filed affidavit in reply to the present petition wherein it has been averred that in view of the complaints received against the petitioner for misappropriation, while the petitioner was working at the Primary Health Centre, Amod, preliminary inquiry was conducted and in view of the GR dated 17.10.1994, promotion is required to be considered on the basis of seniority cum suitability. The deponent has also submitted that at the time of granting promotion, confidential report is also required to be considered; that in view of the complaints and the inquiry initiated against the petitioner and the adverse remarks made in that behalf, the department has rightly decided the issue and the order that came to be passed by the authority is in accordance with the law which is legal and proper and does not call for interference. In para 5 of the affidavit in reply, the deponent has submitted that now the matter is pending before the appropriate authority to take appropriate decision and, therefore, appropriate decision will be taken by the said authority and during the pendency of the said matter, the petitioner is not entitled for any such relief in this petition. Against that, the petitioner has filed rejoinder wherein it has been contended by the petitioner that the petitioner was under suspension from 23.9.1982 by order dated 8.9.1982 but the said order of suspension was set aside by this court in a petition being special civil application no. 5229 of 1985 and, therefore, that order was revoked by the respondents by order dated 11th February, 1986 and the period of suspension was treated as a period spent on duty by order dated 22nd April, 1991.It has also been contended by the petitioner in his rejoinder that it is not a regular departmental inquiry or proceedings initiated against the petitioner till this date by the respondents. No adverse remarks have been communicated to the petitioner and as such, those adverse remarks cannot be taken into consideration by the respondents. The petitioner has also pointed out that the petitioner was permitted to cross his efficiency bar with effect from 1.4.1985 by order dated March, 1993 passed by the

Regional Deputy Director, Baroda. The petitioner was reinstated in service by order dated 30.9.1991 when he was declared acquitted by the Special Judge at Bharuch and entire period of suspension has been treated as a period spent on duty and, therefore, according to the petitioner, when he is not having any knowledge about any kind of inquiry initiated against the petitioner in respect of major allegations and when the petitioner has successfully undergone the course and and acquired DPH Qualification (Diploma in Public Health), and has also been promoted on the post of Class I by the Additional Director, Health by notification dated 27.9.2001, he is entitled for the benefit of the scale as specified in the GR dated 17.10.1994. The respondents have not filed any counter to the rejoinder filed by the petitioner.

I have considered the averments made by the petitioner in the memo of petition as well as the reply filed by the respondents and the rejoinder thereto filed by the petitioner. The short question arising for this Court's consideration is, whether the petitioner is entitled for the benefits flowing from the GR dated 17.10.1994 or not. Said GR dated 17.10.1994 is relating to the senior scale, selection scale and promotion to the post of Class I from the post of Class II as stated earlier. It was submitted by the learned advocate Mr. Shah that inspite of the fact that nothing is pending against the petitioner and though nothing adverse has been communicated to the petitioner by the respondents till this date, the respondents are denying such benefits flowing from the GR dated 17.10.1994 to the petitioner under the guise of preliminary inquiry alone. He also pointed out that the petitioner is entitled for the scale available to him as per GR dated 17.10.1994 and the respondents are not justified in denying such benefits to him when there is no provision to deny such benefit because of such alleged preliminary inquiry. According to him, there is no such condition incorporated in the said Resolution.

On the other hand, learned AGP Mr. Mengde appearing for the respondents has submitted that the respondents have made it clear in their affidavit in reply that some preliminary inquiry is pending against the petitioner in respect of the charge of misappropriation and for that appropriate decision is required to be taken by the appropriate authority, which is yet not taken by the appropriate authority and on that ground alone, the petitioner has not been given the benefits of the said GR dated 17.10.1994 and, therefore, no reliefs as prayed for by the petitioner can be granted

in this petition.

I have considered the submissions made by the learned advocates for the parties. I have also minutely perused the GR dated 17.10.1994 wherein the pay scale has been prescribed for he post of General Duty Medical Officers. Said GR dated 17.10.1994 provides that the Medical Officer Class II working in the pay scale of Rs.2200-4000 has to be considered to be eligible for promotion to the post of Medical Officer Class II in the pay scale of Rs.3000-4500 after completion of six years regular service and the said post shall be considered to be the post of Senior Medical Officer. Clause 2 of the said GR provides that the officer who is performing duties in the pay scale of Rs.3000-4500 has to be considered to be eligible for promotion in the pay scale of Rs.3700-5000 after completion of seven years service in the scale of Rs.3000-4500 and the said post of promotion shall be considered to be the post of Chief Medical Officer. Clause 3 of the said GR dated 17.10.1994 provides that after completion of six years service in the pay scale of Rs.3700-5000, such officer has to be placed in the scale of Rs.4500-5700. It further provides that the said posts of selection scale will be about 15 per cent of the total posts of Medical Officer, Class II. In the said resolution, no such provision has been made that such benefit cannot be given to the officer against whom preliminary inquiry is pending. No such condition has been incorporated in the said resolution. It is also necessary to be noted that in the said resolution dated 17.10.1994, certain clarifications were sought by the department and the same have been made by the Government vide GR dated 13.1.1995 (page 21 of the petition) wherein it has been mentioned that while giving such benefits under GR dated 17.10.1994, certain relevant factors are required to be taken into consideration; if any departmental inquiry or complaint is pending, then,it has to be taken into account but ultimately, the authority has to consider the that the concerned officer is not unfit for the post of promotion and that is the relevant criteria which is required to be taken into account. As per item No. 8 of the clarificatory GR dated 13.1.1995, those medical officers Class II who have completed six years regular service are required to be promoted in the pay scale of Rs.3000-4500. Likewise, those who have completed thirteen years regular service are to be placed in the pay scale of Rs.3700-5000 by treating them to have been promoted on the post of Medical Officer, of course, on the basis of seniority cum fitness, provided that they are, otherwise, eligible for the post of chief medical

Officer. In case of such promotion, notioal pay fixation is required to be done. On that basis, the petitioner had made one request in writing to the respondents by letter dated 4.4.98 but no such benefit has been extended in favour of the petitioner. Therefore, considering these two facts and the two Government Resolutions namely GR dated 17.10.1994 and the 13.1.1995 wherein the Government has made certain clarifications in respect of the GR dated 17.10.1994, according to my opinion, it is not the case of the respondents that the petitioner is, otherwise, unfit for the post of promotion as per the said GR. The respondents have not made any such averments in their affidavit in reply. Only on the ground of pendency of the preliminary inquiry, such benefits have not been extended to the petitioner. Except the pendency of the preliminary inquiry, nothing adverse has been pointed out against the petitioner by the respondents.

Therefore, considering the GR dated 17.10.1994 and the clarification made by GR dated 13.1.1995, when there is no case of the respondents about the unfitness of the petitioner, then, the petitioner is entitled for the benefit of the GR dated 17.10.1994 and according to my opinion, that has wrongly been denied by the respondents and, therefore, according to my opinion, the petitioner is entitled for the senior scale as per GR dated 17.10.1994.

In the result, this petition is allowed. The respondents are directed to extend all the benefits to the petitioner as per GR dated 17.10.1994 and to pay the amount of arrears as per the GR dated 17.10.1994 within the period of three months from the date of receipt of copy of this order. Rule is made absolute in terms indicated hereinabove with no order as to costs.

Dt.10.12.2003. (H.K. Rathod,J.)

Vyas